

NOV 1 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Market Entry and Regulation)
of International Common)
Carriers with Foreign)
Carriers Affiliations)

RM No. 8355

OPPOSITION TO PETITION FOR RULEMAKING

EMI Communications Corporation ("EMI"), through its attorneys, submits this opposition to the Petition for Rulemaking filed by American Telephone and Telegraph Company ("AT&T") in the above-captioned proceeding, pursuant to the Commission's Public Notice (Report No. 1975) issued October 1, 1993. EMI opposes AT&T's Petition because: 1) AT&T is using its Petition to challenge Commission decisions that have long been final; 2) AT&T is using this Petition to reargue its position currently under review in a separate pending proceeding well beyond the time allowed for further comment in that proceeding; and 3) AT&T misconstrues the Commission's resale equivalency policy.¹

¹ In the matter of the Regulation of International Accounting Rates Proceeding, Phase II, First Report and Order, 7 FCC Rcd. 559 (1991), ("International Resale Order"), Order on Reconsideration and Third Notice of Proposed Rulemaking, 7 FCC Rcd. 7927 (1992). See also In re Applications of EMI Communications Corporation and FONOROLA Corporation, Memorandum, Opinion, Order and Certification, 7 FCC Rcd. 7312 (1992) ("Certification Order").

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EMI is a non-dominant, U.S. common carrier. EMI currently has Section 214 authority to resell certain private line and switched services to Canada, and to provide video and related audio services domestically and internationally.²

AT&T seeks to use the instant Petition as a vehicle to once again challenge the Commission's application of its international policy. On its face, AT&T's Petition appears to be concerned with unfair market entry and competition existing between the United States and foreign countries, which operate to the detriment of U.S. carriers. In addition, AT&T's proposed rules appear to apply to only "foreign carriers or their U.S. affiliates."³ Read more closely, however, it is apparent that AT&T is seeking Commission action that is significantly broader than its proposed rules suggest.⁴

EMI's concerns arise from AT&T's characterization of the Commission's international private line resale policy, and its attempt to modify Commission policy and influence pending Commission proceedings from which it would otherwise

² Eastern Microwave, Inc., 70 FCC 2d 2195 (1979); Eastern Microwave, Inc., 88 FCC 2d 258 (1981); Eastern Microwave, Inc., 6 FCC Rcd. 5518 (1991); Certification Order, 7 FCC Rcd. 7312 (1992); EMI Communications Corporation, 8 FCC Rcd. 2793 (1993).

³ AT&T Petition, Attachment I.

⁴ AT&T Petition pp. 24-26.

be procedurally foreclosed.⁵ The Commission's international private line resale policy was not designed in an earlier era. On the contrary, it was recently established to address the changing market structure.⁶ Moreover, International private line resale provides a form of access to both the U.S. market for foreign carriers, and to foreign markets for U.S. carriers.⁷ Consequently, the Commission's policy also applies to U.S. carriers seeking Section 214 authority to provide service on an international private line resale basis in competition with AT&T, of which EMI is one.

AT&T suggests that the decision reached by the Commission in its Certification Order⁸ relating to EMI was somehow flawed, based on AT&T's interpretation of what the Commission's equivalency standard should be.⁹ AT&T argues that the solution to this perceived problem is for the Commission to apply AT&T's proposed rule for assessing "comparable opportunity" in making determinations of "equivalency" in the future.¹⁰ Acceptance of this

⁵ Id. Certification Order, supra n.1. See also MCI Communications Corp. and British Telecommunications PLC, Petition for Declaratory Ruling, File No. ISP-93-013, Public Notice, Report No. I-6850 (released August 25, 1993).

⁶ Supra n.1.

⁷ See AT&T Petition p. 24.

⁸ Supra n.1.

⁹ AT&T Petition pp. 25-26.

¹⁰ AT&T Petition p. 26 n.32.

proposition, of course, would be tantamount to granting AT&T reconsideration of the Commission's International Resale Order.¹¹

As AT&T indicated, it has filed a Petition for Reconsideration of the Commission's Certification Order, which is pending.¹² In its Petition for Reconsideration, AT&T made the same general assertion that it makes in the instant Petition for Rulemaking; namely, that the Commission has misapplied the equivalency standard by failing to undertake a "comparative analysis" of the resale opportunities within Canada and the United States.¹³ AT&T also sought to impose the same comparative analysis standard in its Petition to Deny and Reply filed in the same

¹¹ Supra n.1. The Commission's equivalency standard applies to all carriers. 47 C.F.R. § 63.01(k)(5) (1992). Notwithstanding the scope of the Commission's Rule, it is unclear whether AT&T's intention is to apply its redefined equivalency standard to only foreign carriers and their U.S. affiliates (which is the limit of AT&T's proposed rule) or to U.S. carriers as well. Regardless of what AT&T's intention is, AT&T was a party to the Commission's proceeding from which the Commission adopted its international private line resale equivalency standard and that portion of the proceeding is no longer subject to review.

¹² Id. at n.30.

¹³ AT&T Petition for Reconsideration filed December 4, 1993 in File Nos. I-T-C-91-050 and I-T-C-91-103, p. 6. EMI is also particularly troubled by AT&T's failure to serve EMI with a copy of its instant Petition for Rulemaking when AT&T has included virtually the same argument contained in its pending Petition for Reconsideration. It also should be made clear that the Commission's Certification Order was in response to two separate applications, one by EMI and the other by FONOROLA. There is no ownership or service relationship between EMI and FONOROLA.

proceeding.¹⁴ Contrary to AT&T's assertions, the Commission determined that EMI and FONOROLA had satisfied the Commission's equivalency standard.¹⁵ It is inappropriate for AT&T to circumvent Commission process by using its instant Petition to reargue its position in another proceeding long after the time for further comment in that proceeding has closed.

Accordingly, AT&T's Petition should be denied to the extent it is merely a veiled attempt to redefine the Commission's policy established in its International Resale Order¹⁶ and reargue its pending Petition for Reconsideration of the Commission's Certification Order.¹⁷

Respectfully submitted,

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¹⁴ AT&T Petition to Deny filed May 22, 1992 and AT&T Reply filed June 16, 1992 in File No. I-T-C-91-050.

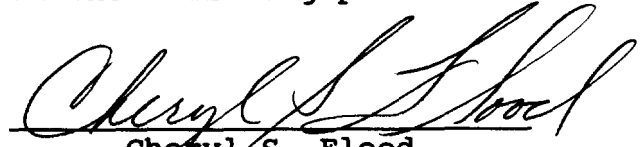
¹⁵ Certification Order, supra n.2, para 8.

¹⁶ Supra n.1.

¹⁷ Id.

CERTIFICATE OF SERVICE

I, Cheryl S. Flood, on this 1st day of November, 1993, have caused to be served by U.S. first-class mail, or as otherwise indicated, the foregoing Opposition to Petition for Rulemaking in RM No. 8355 on the following parties:


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